

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Denial of Cancellation of  
Collection Costs of Jones Marketing Group, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on June 22, 2011, at the Office of Administrative Hearings.

Joan M. Tujetsch, Staff Attorney, appeared on behalf of the Minnesota Department of Revenue (Department). Paul D. Jones, as owner, appeared on behalf of the Respondent, Jones Marketing Group, Incorporated (the Company). The hearing record closed at the conclusion of the evidentiary hearing.

**STATEMENT OF THE ISSUE**

Whether any of the circumstances referenced in Minn. Stat. § 16D.11, subd. 3, require cancellation of the collection costs sought to be recovered by the Minnesota Department of Revenue?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Jones Marketing Group is a Minnesota corporation. The company's sole shareholder is Paul D. Jones.<sup>1</sup>

2. In late 2008 and early 2009, Jones Marketing Group had a significant downturn in its business. In this time period, the company reduced its staff and ended its relationship with its bookkeeping and payroll service – Paychex.<sup>2</sup>

3. Mr. Jones acknowledges that as the company rapidly downsized there was a "poor transition" of bookkeeping responsibilities away from Paychex to himself.<sup>3</sup>

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<sup>1</sup> See, Testimony of Paul D. Jones; Exhibit A.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

4. The Company did not remit \$6,962.00 taxes for the period that included the fourth quarter of calendar year 2009 through the first quarter of 2010.<sup>4</sup>

5. By way of a letter dated June 1, 2010, the Minnesota Department of Employment and Economic Development (“DEED”) sent a “Notice of Intent to Refer Debt to the Department of Revenue Collection Division.” DEED asserted that:

Our records indicate that JONES MARKETING GROUP INC owes \$6,962.00 to the Minnesota Department of Employment and Economic Development (DEED). This is debt owed on your unemployment insurance account and does not include debt previously referred to [Department of Revenue Collection Division].

Of this debt amount, \$6,211.00 is past due and will be referred to DORCD. To avoid referral to DORCD, this amount must be paid in full and received by DEED on or before [July 2, 2010].<sup>5</sup>

6. Neither Mr. Jones, nor the Company, responded to, or made full payment of the debt amount to DEED by July 2, 2010.<sup>6</sup>

7. When the unpaid debt was referred by DEED to the Department of Revenue Collection Division, the Collection Division added to the debt amount the 20 percent collection cost surcharge as directed by Minn. Stat. § 16D.11.<sup>7</sup>

8. In December of 2010, Mr. Jones received loans from family members and friends – sums that Mr. Jones pledged to use as new business capital for Jones Marketing Group. These loan proceeds were deposited into Jones Marketing Group’s corporate bank accounts with M & I Bank.<sup>8</sup>

9. On December 22, 2010, the Department sent a levy notice to M & I Bank. The Department demanded remittance of sums in the account to satisfy the earlier debt of unpaid unemployment taxes.<sup>9</sup>

10. The Department recovered \$7,584.93 through the levy against Jones Marketing Group’s bank accounts.<sup>10</sup>

11. Following the levy, Mr. Jones did telephone the Division to inquire about the possibility of arranging a payment plan to address the company’s debts. While

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<sup>4</sup> See, Exs. 2 and 3.

<sup>5</sup> Ex. 3.

<sup>6</sup> Testimony of Valerie Nielsen; Ex. A.

<sup>7</sup> Test. of V. Nielsen; see *also*, Ex. 4.

<sup>8</sup> Test. of P. Jones.

<sup>9</sup> Ex. 5.

<sup>10</sup> Test. of V. Nielsen.

Department staff signaled their willingness to enter into such an agreement, neither Mr. Jones nor the company has regular income with which to secure debt-reduction payments.<sup>11</sup>

12. Mr. Jones, on behalf of the company, objected to the imposition of collection costs and requested that the Minnesota Department of Revenue waive those costs.<sup>12</sup>

13. By way of a letter dated January 27, 2011, the Minnesota Department of Revenue Collections Division denied the request to cancel the imposition of collection costs. As the Department reasoned, none of the statutory exemptions – particularly those relating to debtors who are individuals – applied to a corporate entity like Jones Marketing Group.<sup>13</sup>

14. Mr. Jones, on behalf of the company, filed a timely appeal of the reconsideration determination.<sup>14</sup>

15. As of May 23, 2011, the date of the Notice and Order for Hearing in this matter, the amount of collection costs was \$1,584.20.<sup>15</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Revenue have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 16D.11, subd. 4.

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant procedural requirements of law and rule.

3. The Department has the authority to impose collection costs, as set forth in Minn. Stat. § 16D.11, subds. 1 and 2.

4. The Respondent failed to timely remit \$6,962.00 in unemployment insurance taxes.

5. The Respondent failed to remit the total amount of overdue unemployment insurance taxes, as demanded by the Department of Employment and Economic Development. Having failed to respond to this demand with full payment, the debt was properly referred to the Department of Revenue Collection Division and the imposition

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<sup>11</sup> Test. of P. Jones; *see also*, Ex. A.

<sup>12</sup> *Id.*

<sup>13</sup> Ex. 5.

<sup>14</sup> *Notice and Order for Hearing*, OAH Docket No. 8-3600-22087-2, at 1.

<sup>15</sup> *Id.*, at 2.

of collection costs imposed under Minn. Stat. § 16D.11 in accordance with the statutory requirements.

6. Minnesota Statutes § 16D.11, subdivision 3, provides for cancellation of collection costs in the following circumstances:

(1) the debtor's household income as defined in section 290A.03, subdivision 5 excluding the exemption subtractions in subdivision 3, paragraph (3) of that section, for the 12 months preceding the date of referral is less than twice the annual federal poverty guideline under United States Code, title 42, section 9902, subsection (2);

(2) within 60 days after the first contact with the debtor by the enterprise or collection agency, the debtor establishes reasonable cause for the failure to pay the debt prior to referral of the debt to the enterprise;

(3) a good faith dispute as to the legitimacy or the amount of the debt is made, and payment is remitted or a payment agreement is entered into within 30 days after resolution of the dispute;

(4) good faith litigation occurs and the debtor's position is substantially justified, and if the debtor does not totally prevail, the debt is paid or a payment agreement is entered into within 30 days after the judgment becomes final and nonappealable; or

(5) collection costs have been added by the referring agency and are included in the amount of the referred debt.

7. Respondent the Jones Marketing Group, Incorporated did not establish that any of the exceptions set forth in Minn. Stat. § 16D.11, subd. 3 is applicable in this instance.

8. Department may proceed with collection of the fee through Revenue Recapture or any available means of civil debt collection.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner AFFIRM the imposition of collection costs in this matter.

Dated: August 1, 2011

s/Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording  
No transcript prepared

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Myron Frans, Commissioner, Minnesota Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

Mr. Jones asserts that the recovery of the collection costs from his company's accounts is inappropriate because he was not aware of the claims made by DEED in 2010 and later attempted to undertake a payment plan with the Department for the principal amount due. Moreover, given the fact that he and his family are indigent, Mr. Jones asserts that the government's further claim for recovery costs is punitive and excessive.<sup>16</sup>

While acknowledging the hardships that the Jones family has faced recently – particularly as they lost the business loan proceeds, through which they hoped to revive their company, by way of the bank levy – the law does not relieve Jones Marketing Group from its obligations to pay on account of its owner's financial difficulties. Now, undoubtedly, financial stress for a company may mean real stress for its owner; and has in this case. Yet, Minn. Stat. § 16D.11, subd. 3 does not presume that this is true or provide for relief to corporate owners when it comes about. The law does not provide relief in a case such as this.

Under the terms of the Notice a full payment was to be received by DEED on or before July 2, 2010, in order to avoid a referral of the debt to the Department of Revenue,<sup>17</sup> and, under the statute, the addition of collection costs. As noted above, full payment of the overdue amounts was not received by July 2, 2010. Under these circumstances, both the referral and the addition of collection costs were proper.

For these reasons, the Commissioner should affirm the imposition of the collection costs.

**E. L. L.**

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<sup>16</sup> Ex. A.

<sup>17</sup> Ex. 3.